

## **STAFF REPORT**

**To:** Lewis County Planning Commission  
**From:** DCD Staff and Consultants  
**Date:** January 13, 2009  
**Re:** Compliance Action on Agricultural Resource Lands (ARLs)

### **I. ISSUE**

The issue for the Planning Commission is to determine if additional lands are appropriate for ARL designation, based on the direction in the Growth Management Hearings Board's July 7, 2008 Compliance Order and on the application of the criteria of WAC 365-190-050.

### **II. STAFF RECOMMENDATION**

Staff and consultants recommend the designation of additional ARLs identified in the attached subarea maps and corresponding aerial photos, and as described in the attached "Summary of Application of WAC ARL Criteria."

### **III. SUMMARY**

The Western Washington Growth Management Hearings Board (GMHB) issued a Compliance Order<sup>1</sup> on July 7, 2008. In this order, the GMHB approved much of the County's 2007 Agricultural Resource Lands (ARL) designation, but remanded the actions to the County to resolve several shortcomings. The ARL designations adopted by the County in 2007 are still in place and need not be revisited. Rather, the Compliance Order requires consideration of additional lands for possible ARL designation.

Specifically, the Compliance Order requires that the County:

- consider for possible ARL designation lands with non-soil dependent agricultural uses;
- consider for possible ARL designation lands that are used for agriculture within designated Forest Resource Lands;

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<sup>1</sup> The GMHB issued a combined Compliance Order, 99-2-0027c, 00-2-0031c, and Final Decision and Order, 08-2-0004c. For convenience, this order will be referred to as the Compliance Order.

- consider whether it can be determined if lands with soils classified as prime-if-drained or prime-if-irrigated are in fact drained or irrigated, and consider drained or irrigated lands for possible ARL designation;
- re-evaluate for possible ARL designation lands within the vicinity of I-5;
- revise LCC 17.30.610 and 17.30.650 to ensure the conservation of designated ARLs.

#### **IV. ATTACHMENTS**

Attached to this Staff Report are memos addressing each of these specific compliance issues. These memos explain how data were collected and analyzed by staff and consultants.

- Memo #1 - Non-soil Dependent Agricultural Uses
- Memo #2 - Agricultural Uses within FRL Designated Lands
- Memo #3 - Prime-if-Drained and Prime-if-Irrigated Soils
- Memo #4 - Lands within Vicinity of I-5
- Memo #5 - Development Code Revisions
- Summary of Application of WAC ARL Criteria
- Subarea Maps with 2007 ARL and Recommended 2009 ARL additions ("Recommendation to Planning Commission – 12/30/08")
- Aerial photographs corresponding subarea maps ("Recommendation to Planning Commission – 12/30/08")

## MEMO #1

**To:** Lewis County Planning Commission  
**From:** DCD Staff and Consultants  
**Date:** January 13, 2009  
**Re:** Non-soil Dependent Agricultural Uses

### **I. 2007 ARL Designation**

Non-soil dependent agricultural uses include poultry operations, horticultural activities, Christmas tree farms, and fish hatcheries. In the 2007 ARL designation process, only those non-soil dependent uses located on prime soils were evaluated for possible ARL designation. Instead, these uses were protected through development regulations.

### **II. Compliance Order**

The Growth Board concluded the County did not properly consider for possible ARL designation those non-soil dependent uses occurring on non-prime soils. The Growth Board stated: "By excluding from consideration for ARL designation non-soil dependant [sic] uses the County failed to maintain and enhance those uses and this exclusion violates RCW 36.70A.170 and RCW 36.70A.020(8). The County is not required to designate all non-soil dependent agricultural uses ARL, but it may not exclude them solely on the basis on [sic] non-prime soils." (Compliance Order at 78.)

### **III. 2008 - 2009 Data Analysis**

Consultants researched agency and association sources to identify lands possibly supporting non-soil dependent agricultural uses.

#### Poultry Operations:

A list of poultry farms was compiled based on information provided by County records, Petitioner Butler, and the USDA. This list was verified using aerial photography. Thirty-seven visually confirmed poultry operations were mapped for consideration as ARL. Most occurred on prime-if-drained soils and prime soils. Parcel sizes ranged from 13 – 147 acres. The footprint of most poultry operations occupies only a portion of these parcels. If poultry operations were confirmed using aerial photos, they were evaluated for potential ARL designation.

#### Horticulture Operations:

A list of all licensed retail and wholesale nursery dealers was obtained from the Washington State Department of Agriculture. This list included mailing addresses for nurseries, which are not necessarily the physical address of the nursery operation. All of the nurseries that are located in Lewis County were selected from this list and mapped for

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consideration as ARL. Seventy-seven nurseries were listed for Lewis County rural areas. Fifteen of the 77 are licensed as wholesale nurseries. Most of the wholesale nurseries are located near I-5, US-12, or Highway 508. Although a majority of the listed nurseries are in RDD zones, many are in or adjacent to the 2007 ARL designations. Listed nurseries are located on prime, prime-if-drained, and prime-if-irrigated soils. Parcel sizes range from less than one acre to over 250 acres. The footprint of most horticultural operations occupies only a portion of these parcels. Aerial photos were used to determine which of the listed nurseries were actually in operation at the identified location. If nursery operations were confirmed, these parcels were evaluated for ARL designation.

#### Christmas Tree Farms:

A list of Christmas Tree growers with Lewis County zip codes was obtained from the Northwest Christmas Tree Association. The list contains approximately 40 growers; some located outside of the County and some were within city limits, thus outside of County jurisdiction. Most listed growers were located near I-5, US-12, or Highway 506. Most listed growers are in RDD zones, with some in or adjacent to 2007 ARL designations. The majority of listed growing operations are located on prime soils and farmlands of statewide importance. Parcel size ranges from 1 - 40 acres. Aerial photos were used to determine which of the listed Christmas tree growing operations were actually in operation at the identified location. If this was confirmed, these parcels were evaluated for ARL designation.

#### Fish Hatcheries:

Fish hatchery operations were identified using the County's GIS data. Three hatcheries were identified: two are operated by Tacoma Power (Cowlitz River Trout Hatchery and Cowlitz River Salmon Hatchery) and one is operated by the Washington Department of Fish and Wildlife (Mossyrock Trout Hatchery). All are located in RDD zones. All three were evaluated for ARL designation.

## **MEMO #2**

**To:** Lewis County Planning Commission  
**From:** DCD Staff and Consultants  
**Date:** January 13, 2009  
**Re:** **Agricultural Uses within Areas Designated Forest Resource Lands (FRLs)**

**I. 2007 ARL Designation**

Lands designated as Forest Resource Lands (FRLs) were not evaluated for potential ARL designation in 2007.

**II. Compliance Order**

The Growth Board determined that lands within FRL designation could not be excluded from consideration for possible ARL designation. "The County's ARL designation process failed to consider for ARL designation lands currently designated as forest lands of long-term commercial significance and this does not comply with RCW 36.70A.170 and RCW 36.70A.020(8)." (Compliance Order at 79.)

**III. 2008 – 2009 Data Analysis**

Possible areas of agricultural uses in FRLs were identified by Assessor's data, including current use tax status. Lands in FRL that are in Current Use Agriculture or Agriculture Not Cultivated tax status were identified. Twelve such areas were found and each area consists of between 1-16 parcels clustered together. Most of these areas are adjacent to large RDD zones; only two areas are adjacent to 2007 ARLs. These uses occur on a variety of soil types. Parcel size ranges from 5-200 acres, with the majority over 20 acres. Aerial photos were used to confirm whether these or other agricultural uses were occurring in these FRLs. All agricultural uses that were confirmed in FRLs were evaluated for possible ARL designation.

## **MEMO #3**

**To:** Lewis County Planning Commission  
**From:** DCD Staff and Consultants  
**Date:** January 13, 2009  
**Re:** **Prime-if-Drained and Prime-if Irrigated Soils**

### **I. 2007 ARL Designation**

Soils classified as prime-if-drained and prime-if-irrigated were determined not to be prime soils for purposes of ARL designations. Prime-if-drained soils were not considered prime soils because it was not possible to reliably determine what lands containing these soils had been artificially drained or, if they had been drained, whether those drains were still operable. Prime-if-irrigated soils were not considered prime soils because it was not possible to reliably determine the existence of valid water rights that would permit irrigation.

### **II. Compliance Order**

The GMHB agreed with the County's conclusion that prime-if-drained and prime-if-irrigated soils "are not prime soils in the absence of the means necessary to have an appropriate level of moisture." (Compliance Order at 42.) However, the GMHB determined that to exclude lands with prime-if-drained soils "because no data is available to identify which lands with prime[-if-drained] soils are drained is not sufficient." (Compliance Order at 3.) This reasoning also applies to prime-if-irrigated soils. The GMHB stated:

If "prime if drained/irrigated lands" are in fact drained or irrigated then they are prime soils which under the County's methodology are qualified for further consideration for designation [and] the County must make an effort to identify these lands.

(Compliance Order at 3.) The GMHB concluded: "on remand, the County needs to either consider for ARL designation its 'prime if drained/irrigated' lands that are in fact drained/irrigated or demonstrate to the Board that its efforts to so were thwarted by actual (rather than anticipated) denials of access or other major impediments to identifying these lands." (Compliance Order at 43.)

### **III. 2008 -2009 Data Analysis**

#### **A. Prime-if-Drained Soils**

There are approximately 9,940 acres of lands with prime-if-drained soils that are outside of cities and UGAs. The Natural Resources Conservation Service (NRCS), formerly SCS, confirms they have no records of which properties may have artificial drainage. Nor does the County have any such records. Although there are no official records of artificial drainage, the Soil Survey of Lewis County (1987) notes that some lands have been drained. Evidence of artificial drainage, or lack thereof, must therefore be obtained by other means.

Some property owners have submitted declarations that their properties have not been and will not be artificially drained. Prime-if-drained soils on these properties are therefore not prime soils. Other properties where drainage or lack of drainage cannot be confirmed either by landowner verification or by visible inspection have been evaluated as prime soils for possible ARL designation.

Using the County's GIS system, aerial photographs of lands with prime-if-drained soils were examined to identify lands where there is visible evidence of agricultural activity. Where agricultural activity was evident or the lands otherwise appeared capable of being farmed, staff and consultants then applied the WAC criteria to evaluate the long-term commercial significance of these lands for agricultural production. The subareas utilized in 2007 were also used in this 2008 compliance analysis. Some subareas have been slightly expanded to ensure consideration of all potential ARLs.

#### **B. Prime-if-Irrigated Soils**

There are approximately 245 acres of lands with prime-if-irrigated soils that are outside of cities and UGAs. As with artificial drainage, no records are available to identify which properties are irrigated. In addition, it is difficult to ascertain with any certainty whether viable water rights were available for irrigation. However, asserted water rights were used as the starting point of this analysis.

A list of water rights certificates, claims, and new applications was obtained from the Department of Ecology's Water Rights Tracking System. This list includes asserted rights, which may not be approved by Ecology, and it includes approved rights which may not have been exercised and are therefore no longer valid. The list contains over 9,000 asserted water rights, of which approximately 1,400 were irrigation rights. Also, asserted water rights are identified only by sections, quarter-sections, and quarter-quarter sections (1/8 to 1 square mile); consequently, correlating the asserted water rights with a specific parcel is difficult.

The asserted water rights were identified on maps and were then evaluated by reviewing aerial photographs and applying the WAC criteria.

## **MEMO #4**

**To:** Lewis County Planning Commission  
**From:** DCD Staff and Consultants  
**Date:** January 13, 2009  
**Re:** Lands within Vicinity of I-5

### **I. 2007 ARL Designation**

Lands with prime soils in the vicinity of I-5 were evaluated in 2007 along with lands with prime soils throughout the County. The WAC criteria were considered. "Relationship or proximity to urban growth areas" was considered in the context of testimony from cities (Napavine and Toledo) regarding future desired UGA expansions. This criterion and the application of other criteria related to development pressures were evaluated and resulted in the exclusion of some lands in the vicinity of I-5 from ARL designation.

### **II. Compliance Order**

The Growth Board did not agree that these lands were not appropriate for ARL designation. Specifically, the Growth Board found "[p]articularly troubling are the County's lack of definition in regards to the proximity to urban growth areas and defining almost all the lands adjacent to [sic] I-5 corridor as having more value under alternative uses. In addition, the County inappropriately considered the presence of industrial activity and tight line sewer lines in its analysis."<sup>2</sup> (Compliance Order at 50.)

With respect to consideration of future UGA expansions as a factor in ARL designation, the Growth Board noted that "No documented need exists in the record that shows that the County needs this land to accommodate the 20-year population growth or commercial and industrial needs, or that the County looked to other lands to accommodate those needs." (Compliance Order at 52.)

### **III. 2008 - 2009 Data Analysis**

The lands in the vicinity of I-5, including lands around Centralia, Chehalis, Napavine, Winlock, Toledo, and Vader, were re-evaluated using the WAC criteria for possible ARL designation. This re-evaluation applies to lands with prime soils that were evaluated in 2007. Additional lands were also included in this re-evaluation, including lands with prime-if-drained or prime-if-irrigated soils and non-soil dependent agricultural uses.

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<sup>2</sup> The Growth Board was incorrect in this statement. The Growth Board erroneously assumed that the County was relying on a sewer line from Winlock to the Cardinal Glass plant as evidence of the availability of public facilities. There is no such sewer line. Winlock provides municipal water to Cardinal Glass, which was not a factor in this analysis.



Unsupported city testimony that lands were needed for future UGA expansions were given no consideration, pursuant to Growth Board direction.

Parcels that are adjacent to (i.e., touching) UGAs were generally excluded from proposed ARL designation, with the exception of large parcels with prime soils that appear to be in active agricultural production.

## **MEMO #5**

**To:** Lewis County Planning Commission  
**From:** DCD Staff and Consultants  
**Date:** January 13, 2009  
**Re:** Development Code Revisions

### **I. 2007 ARL Designation**

Certain development regulations were revised in 2007 to implement ARL designation. Specifically, LCC 17.30.620 (primary uses) was renumbered (as LCC 17.30.610) and amended to identify additional permitted primary uses in the ARL zone. LCC 17.30.660 (maximum density and minimum lot area) was also renumbered (as LCC 17.30.650) and amended to eliminate the possibility of densities of one unit per 10 acres and to include an exception, for the purpose of subdivision, of consideration as prime farm lands those lands previously converted to non-crop related agricultural uses.

### **II. Compliance Order**

The Growth Board found that family day care and home businesses were inappropriate primary uses and that previously converted lands should not be excluded from consideration as prime farm lands when evaluating a subdivision request. (Compliance Order at 79.)

### **III. 2008 - 2009 Response to Compliance Order**

As proposed to the Planning Commission on August 26, 2008, LCC 17.30.610(1) should be amended to remove the reference to "family day care, home businesses" and these uses should be included in LCC 17.30.620 as accessory uses.

LCC 17.30.650(1)(c) should be amended to remove the reference to "may be subdivided, are not considered prime farm lands for purposes of this section." Also, covenant language previously set out in LCC 17.30.680 (deleted in 2007) should be added as (1)(e).